Docket No. UE-210795 - Vol. I

In the Matter of Puget Sound Energy's Clean Energy Implementation Plan

May 9, 2022
BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

) DOCKET UE-210795

) PUGET SOUND ENERGY

) Clean Energy Implementation
) Plan Pursuant to WAC
) 480-100-640

) VIRTUAL PREHEARING CONFERENCE, VOLUME I
) Pages 1-35
) ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

May 9, 2022
9:30 a.m.

Washington Utilities and Transportation Commission
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40 LACEY, WASHINGTON; MAY 9, 2022
41 9:30 A.M.
42 --00--
43 PROCEEDINGS
44
45 JUDGE HOWARD: Let's be on the record. Good morning. We're here today for a prehearing conference in Docket UE-210795. This case is captioned In the Matter of Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640. This is an adjudicatory proceeding regarding PSE's first Clean Energy Implementation Plan, or CEIP. My name is Michael Howard, and I'm an administrative law judge with the Commission, and I will be co-presiding in this matter along with the Commissioners. The Commissioners will not be joining us at this particular prehearing conference. Because we may have some interested members of the public on the call, I want to explain the purpose of our conference today. This is a meeting for the parties to the case, which would include the Company, Staff, Public Counsel, and other intervenors. The parties and I will be planning for a proceeding that is like a trial in court and will be discussing various procedural issues
around that.

This meeting is not necessarily intended for hearing comments from the public. If you would wish to provide comments, you may file written comments through the Commission’s website or you may attend the public comment hearing that will be in the next few months. The Commissioners will be at that public comment hearing and will be able to consider your remarks then.

So with that explanation in mind, let’s start by taking appearances, beginning with Puget Sound Energy.

MS. BARNETT: Thank you, Your Honor. Donna Barnett. My pronouns are she/her, and I’m with Perkins Coie, representing Puget Sound Energy. And with me is Sheree Carson.

JUDGE HOWARD: Thank you. And could we have an appearance for Staff?

MR. CALLAGHAN: Thank you, Your Honor. Nash Callaghan, Assistant Attorney General, on behalf of Commission Staff. My pronouns are he/him. Thank you.

JUDGE HOWARD: Thank you.

Could we have an appearance for Public Counsel?

MS. SUETAKE: Good morning, Your Honor. My name is Nina Suetake, Assistant Attorney General, for the Public Counsel Unit, and my pronouns are she/her.

JUDGE HOWARD: Thank you.

Could we have an appearance for AWEC, Alliance of Western Energy Consumers?

MS. MOSER: Good morning, Your Honor. Sommer Moser, with Davison Van Cleve, appearing on behalf of AWEC, and my pronouns are she/her.

JUDGE HOWARD: Thank you.

Could we have an appearance for The Energy Project?

MR. FFITCH: Good morning, Your Honor. Simon ffitch, on behalf of The Energy Project.

JUDGE HOWARD: Thank you.

Could we have an appearance for NWEC and Front and Centered?

MS. GOODIN: Good morning, Your Honor. Amanda Goodin, with Earthjustice, appearing on behalf of Front and Centered and the Northwest Energy Coalition.

JUDGE HOWARD: Thank you.

Could we have an appearance for Renewable Northwest?

MS. WARE: This is Katie Ware, appearing on behalf of Renewable Northwest.

So next, turning to the issue of the procedural schedule, before the conference today, I emailed the parties, suggesting possible dates for the hearing. I indicated that the Commission could hold the hearing over two days, on January 31st, 2023, and February 1st, 2023.

The parties shared some proposed schedules over email over the last couple of days. It looks like the parties may still need to discuss and see if they can stipulate to a single proposed schedule.

JUDGE HOWARD: Thank you.

MR. CALLAGHAN: Thank you, Your Honor.

Could we have an appearance for AWEC, The Energy Project, Renewable Northwest, NWEC, and Front and Centered? NWEC and Front and Centered being represented by the same counsel.

And could we have an appearance for The Energy Project?

MR. CALLAGHAN: No objections from Staff, Your Honor.

JUDGE HOWARD: Thank you.

Does any other party wish to indicate an objection?

All right. Hearing none -- hearing none, it is -- I will be granting the written petitions to intervene filed in this docket so far, and I will be addressing this further in the prehearing conference order.

Are there any objections to the written petitions for intervention?

MR. CALLAGHAN: No objections from Staff, Your Honor.

JUDGE HOWARD: Thank you.

Does any other party wish to indicate an objection?

All right. Hearing none -- hearing none, it is -- I will be granting the written petitions to intervene in this docket so far, and I will be addressing this further in the prehearing conference order.

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hearing in this docket on October 24th and 25th, 2022.

That could be something for the parties to consider if
that would work with the schedule as a possibility, but
I would have to confirm that works for the Commission.

I also want to note that the Commission was
interested in having the Company file a crosswalk before
the hearing in this docket that addressed and reconciled
this Commission's findings in general rate case final
order with the testimony of filings in the CEIP docket.

I did not see that addressed specifically in
the emails. Were there any concerns from the Company
with -- with such a suggestion?

MS. BARNETT: Thank you, Your Honor. No
concerns there -- you know, theoretically with it.
It's just I don't think it's going to be as useful or
helpful as -- as we think.

I don't think there's going to be much from
the rate case that we're going to be able to use in the
CEIP coming out of that. And I think it would kind of
artificially have some expectation around it that I
don't think is going to be realized.

So we don't see that it's going to be a
benefit in this case to put something on the schedule to
be waiting for something that probably won't be as
helpful as some people think.

JUDGE HOWARD: That's a fair point to
consider.

Would any other party like to speak to this
issue?

MS. SUETAKE: This is Nina Suetake from
Public Counsel Unit. I guess I'm not entirely sure what
you mean by a "crosswalk." Do you just mean what parts
in the decision would affect the CEIP? If you could
give an explanation, that'd be helpful.

JUDGE HOWARD: Yes. And we have -- we have
done this in some past cases. It's not something that
we do on a regular basis. But it would be asking the
Company -- or directing the Company in the schedule to
file this crosswalk document, showing how the various
findings in the general rate case order that are
relevant to the CEIP docket have -- have been accounted
for or how they impact the testimony that's been offered
so far in this case.

So as Barnett just offered, there --
there -- there may be a number of findings in
the general rate case that do not directly apply to the
CEIP docket, but we still do believe it could be helpful
in case there are findings in the general rate case
final order that impact things like the interim targets
or the customer benefit indicators or any of the other
issues in this case in -- in any way.

MS. SUETAKE: Thank you for that
explanation. I would personally find it useful, and I
think all the parties wouldn't object to that. I mean,
if there are no -- it turns out there are no findings,
that makes sense that they wouldn't have to file
something, but I think we should just leave that up
until the time.

JUDGE HOWARD: All right. Thank you.

Would any other party like to comment on
that particular issue?

MS. GOODIN: Judge Howard, this is Amanda
Goodin, with Earthjustice. I -- I would just flag, I
believe in your email you mentioned the possibility of
having the RFP rules incorporated as part of this
crosswalk, and I know the Company has said they will not
be able to do that. I believe in the rate case, they've
noted that they plan to file a power cost adjustment or
power cost case that incorporate those results.

So to the extent that some of the hearing
date is driven by a desire to wait for that, we think
that it doesn't make sense to wait for something that's
going to be the subject of a separate case and that we
won't have likely anyways.

JUDGE HOWARD: Thank you. I think that --
that does -- that does raise the other issue of
incorporating the RFP results in the CEIP docket. Our
suggestion for the crosswalk was not specifically
concerned with the RFP results, and -- and the timing
that we're proposing for the evidentiary hearing is not
tied to the RFP results.

But I imagine it could be helpful to this
proceeding to incorporate them, but I did receive
Barnett's email, explaining that that might not be
feasible due to the timing.

Would any other party like to comment on
the issue of incorporating the RFP results, because
otherwise, it seems that we're kind of setting that
suggestion aside, as far as incorporating it in this
docket?

All right. Hearing none, I -- those were my
comments and suggestions for the parties to consider.

Have the parties -- since the email
exchange, have the parties agreed and conferred on a
schedule or would it be helpful to go off the record and
the parties confer amongst themselves?

MS. BARNETT: Your Honor, I don't have any
objection to going off the record and conferring. We
have, though, talked informally with the parties for
several weeks and months regarding a schedule for the

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CEIP and getting that resolved. So I don't think it would be beneficial to go off the record this time.

I think it's better that -- you know, we've proposed a schedule that -- and Staff has proposed a general -- a schedule with some general dates. So I don't know if we're going to be able to get much closer than that.

I would, again, like to just go back to any idea of -- we do still have the appeal for the consolidation order pending. And so any links to the general rate case, I'd like to -- you know, right now they are separated, of course.

And so regarding any schedule that links the CEIP to the rate case, I'd like to, you know, again caution that, that I don't want to get into the -- get into the CEIP schedule and have people just say, well, we don't -- we're not ready to talk about that. We're not ready to settle because we want to wait and see what happens in the rate case.

So that's kind of PSE's concerns and why we've proposed a schedule that ends the CEIP by the end of the year, which is extremely important to PSE.

And so with that, I don't know what -- what more we're going to be able to -- what resolution we're going to be able to reach if we just go off the record right now, but I'm certainly happy to.

JUDGE HOWARD: Well, I can appreciate that there are different -- there are competing interests at stake. This isn't an easy question to answer, and the Company is seeking review of that order denying consolidation.

I don't -- I don't think it's an easy issue, and it's -- it's not -- it's not a decision I'm making lightly by recommending the hearing date be later, as I am right now.

But with all that in mind, Staff did propose a procedural schedule over email. It looked like there were -- it was more of an outline of a schedule, and some of the dates need to be filled in.

I would turn to Staff. It would be helpful for you to go off the record and discuss this with the other parties and at least have -- see if you can have some of the parties join you in proposing that?

MR. CALLAGHAN: Thank you, Your Honor. I believe that it would. I just wanted to get confirmation before we go off the record, though, that the schedule that you're looking for is one that incorporates the January 31st evidentiary hearing date; is that correct?

JUDGE HOWARD: That's right.
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1. you would like to address specifically with Staff's proposal?
2. MS. BARNETT: Nothing in -- no, Your Honor.
3. We simply didn't really engage in the discussions around Staff's proposal because PSE just can't support a schedule that extends into 2023.
4. So thank you for your consideration of that.
5. We do support a settlement hearing earlier in twenty -- before the end of the year, and would just like to remind everyone, I guess, that the CEIP has already been open for five months. So when we're talking about specific settlement dates, it has been some significant time that people have already been reviewing this proposal.
6. So with that, nothing further. Thank you.
7. JUDGE HOWARD: All right. Thank you.
8. Could I hear from Public Counsel if Public Counsel has any specific concerns or thoughts?
9. MS. SUETAKE: Thank you, Your Honor. This is Nina Suetake, for Public Counsel Unit. We support Staff's proposed schedule. The schedule takes into consideration the significant staffing, time constraints that are happening this year with the two GRCs on top of each other, as well as a large Telecom proceeding that is happening.

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1. So we would prefer to keep these dates, understanding that if PSE's consolidation motion or petition for rehearing of that request is granted and that we'd have to redo the schedule anyway.
2. So given the requirements of what we have right now, this is what we would support.
3. JUDGE HOWARD: All right. Thank you.
4. Could I have AWEC's position?
5. MS. MOSER: Yes, Your Honor. Sommer Moser, on behalf of AWEC. We support PSE's schedule. We find value in an earlier resolution of this CEIP.
6. With that said, we did engage in dates. In Staff's proposed schedule, they all work for AWEC. So there's not a scheduling conflict. But, again, just support earlier resolution through PSE's schedule to the extent that an earlier hearing date could be accommodated.
7. JUDGE HOWARD: All right. Thank you.
8. Could I hear from The Energy Project?
9. MR. FFITCH: Thank you, Your Honor. Given the desires expressed from the Bench about the schedule, we support -- or we have no objection to the general outline that's been put forward by Staff. Not every single date in the schedule works for us, but we will work around the final schedule issued by the Bench.

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1. Thank you, Your Honor.
2. JUDGE HOWARD: Thank you.
3. And could I hear from NWEC and Front and Centered?
4. MS. GOODIN: Your Honor, Amanda Goodin, with -- appearing on behalf of Front and Centered and NWEC. You know, as I think we've put forward already, we support a shorter schedule along the lines of what PSE has proposed.
5. We think that waiting to resolve this until a year and a half into the implementation period for the four-year plan will significantly prejudice our ability to influence the contents of the plan, which, of course, is the whole point of being able to challenge it via adjudication.
6. We did discuss dates with the other parties on Staff's schedule. We do agree and are available for both of these settlement conference proposed dates, the June 23rd and August 16th.
7. For response testimony, even if -- even if the Commission decides to schedule an evidentiary hearing in late January, early February, as I believe we suggested, we still see value in an earlier response testimony deadline. We would prefer a late August response testimony date even if the evidentiary hearing is pushed into 2023.
8. We also support the October 24th, 25th settlement hearing, scheduling that in case we're able to resolve anything.
9. And I know, for cross-answering testimony, I believe the parties also said they would be available for a deadline week of November 14th if the Commission decides on an earlier response testimony date, which is -- which is something we were not all able to agree to.
10. JUDGE HOWARD: All right. Thank you.
11. And could I hear from Renewable Northwest?
12. MS. WARE: Yes. Katie Ware, on behalf of Renewable Northwest. We participated in the discussion around scheduling conflicts. None of those hard conflicts are ours, so we're comfortable with the outline Nash provided or the more expedited timeline that some of the parties are hoping for. So we will accommodate either way.
13. JUDGE HOWARD: All right. Thank you.
14. One issue that occurs to me right now is that the Company's proposed schedule included dates for submissions for intervenor funding. And I don't believe that Staff's proposed schedule provides for those same dates.
And under the interim agreement that the Commission has approved, normally the request for case certification and notices of intent to seek funding would be due at the prehearing conference or another date that the Commission sets.

So if -- if we were going to have those submissions in this case, I would likely address that in this prehearing conference order.

Do any of the intervenors intend to seek this funding in this case?

MS. GOODIN: Front and Centered does, Your Honor. I am not sure about the Energy Coalition. I will have to double check. But I know Front and Centered does.

MS. MOSER: Sommer Moser, for AWEC. I think we're comfortable with whatever dates are set per your prehearing conference memorandum. I don't think we anticipate there to be funding available after the rate case request for the customers representation trust fund.

To the extent there is, I think we'll evaluate seeking funding at that time. But I think, without knowing where funding in the rate case is going to land, it's a little difficult to say what we will seek or may seek here.

JUDGE HOWARD: Thank you. I think that's a fair point.

So I'm going to move on to a couple of other issues that are related to the procedural schedule. And as I said, I will take all of this under consideration when I am writing this order following our conference today.

Turning to the issue of discovery, I want to be -- I want to caution the parties be judicious in their use of discovery. This is a case involving a new type of filing, which overlaps in some respects with the pending general rate case.

Discovery may not be used as a fishing expedition. If the parties have a discovery dispute, they should attempt to work those out. But if they cannot, they should bring any motions to the Commission for resolution.

I also want to address some specific issues regarding discovery. I don't believe that this was addressed in either of the proposed schedules from either the Company or Staff. But would the parties have any objection to identifying each data request by topic?

Would that be helpful? Would that not be helpful?

MR. CALLAGHAN: Staff believes that that would be helpful. That's a common practice that we've implemented in -- in GRCs in recent years.

MS. SUETAKE: Public Counsel has no objection.

MR. FFITCH: Any support staff is a very helpful practice.

JUDGE HOWARD: All right. I would -- I would intend to include that requirement in the prehearing conference order in that case, unless there are any further -- any other party would like to indicate an objection to that.

All right. Hearing none.

And, again, I don't believe that this was addressed in the proposed schedule, but would the parties want to shorten the response time for data requests after a certain point in the proceeding?

I would turn first to the Company for -- for their proposed schedule.

MS. BARNETT: We have no objection to shortening it in -- along the lines as with a general rate case. We're used to that. So no objection here.

JUDGE HOWARD: All right. I would turn to Staff.

MR. CALLAGHAN: No objection, Your Honor.

JUDGE HOWARD: Would any other party have any concerns or objections to that proposal?
All right. Hearing none.
And we also commonly include a requirement that the parties -- that any data requests and responses are shared with every other party to the proceeding, and we would include such a requirement in the prehearing conference order.
Is there any objection from any of the parties to including such a requirement in this order?
MS. BARNETT: That's correct. We haven't moved for that, but probably appropriate for a standard protective order.
JUDGE HOWARD: Will the -- does the Company intend to move for that?
MS. BARNETT: I hadn't -- we hadn't discussed that, honestly, but the -- but I do probably anticipate there will be confidential information requested. So I move -- I think it's appropriate we move for that now.
JUDGE HOWARD: All right. I would take that as your oral motion for a protective order.
MS. BARNETT: Yeah.
JUDGE HOWARD: And I -- are there any responses from any of the parties?
MR. CALLAGHAN: No objection from Staff, Your Honor.
MS. SUETAKE: No objection from Public Counsel.
JUDGE HOWARD: All right. Thank you. I would grant PSE's motion for a protective order. And I am construing that as simply requesting a protective order with our normal protections for confidential information; is that correct?
MS. BARNETT: Correct, yeah. Standard protective will be fine. If we find we are requesting highly confidential, we will move for a protective order for highly protective provisions at that time.
JUDGE HOWARD: All right. Okay. I just have a few minor issues to touch on before we adjourn today.
So in terms of electronic filing and electronic service, the Commission requires electronic filing of documents for formal filing. We are continuing to suspend the requirements for paper copies and documents in light of the COVID-19 pandemic, and that will be memorialized in the prehearing conference order.
Also, the Commission's rules provide for electronic service of documents. The Commission will serve the parties electronically and the parties will serve each other electronically.
If any party has not yet designated a lead representative for service, please do so via an email to me as soon as possible. My email is Michael.Howard@utc.wa.gov.
Also, if anyone would like to add names and email addresses of other representatives or support staff who should receive electronic courtesy copies of all documents filed in this proceeding, please email that to us as well.
And finally, there is the issue of errata sheets. And I am not certain if that was addressed in the proposed schedule from either the Company or Staff. We typically set this for a week prior to the evidentiary hearing.
Are there any objections to including such a requirement in this prehearing conference order?
MR. CALLAGHAN: No objection, Your Honor.
MS. BARNETT: None from the Company.
MS. SUETAKE: None from Public Counsel.
JUDGE HOWARD: All right. Hearing no objections, I would plan to include that.
Anything else from any of the parties?
JUDGE HOWARD: All right. Thank you. And I have made a note of that courtesy service address.
MS. BARNETT: Thank you.
JUDGE HOWARD: Anything else from any of the parties that we should address?
MS. GOODIN: Your Honor, I neglected to raise this with the other parties in our informal discussion, and that was my oversight, but I don't believe we have a date for a public comment hearing as part of the proposed schedule. And we do feel strongly that there be at least one, and perhaps two public comment hearings. Perhaps one in the evening and one during the day.
We are happy to discuss offline dates that would work for that, but we feel that is an important part of the schedule.
JUDGE HOWARD: I agree and -- that there should be a public comment hearing in this case. I did see that in Staff's proposed schedule, it's a to be determined date, and we frequently will note that so that Public Counsel and Staff and the other parties work out a public comment hearing date and they schedule that with the -- based on the Commissioners' availability.

Were there -- I believe there was a concern -- in Front and Centered's earlier comments, I believe there was a concern that it should be held sometime in the summer; am I right?

MS. GOODIN: Your Honor, that was when we were still looking at the possibility of consolidation. I don't think that we are wed to a specific date, but we want to make sure we -- that it happens early enough for parties and for the Commission to have the positions informed by -- by that hearing.

And I would just also note for the Commission and for other parties, we do plan to ask PSE to consult with its advisory groups, especially including its Equity Advisory Group, on any significant settlement proposal or developments in this docket, given their major role in the development of the CEIP.

JUDGE HOWARD: All right. I will have to consider that last point. I'm not sure if that's within the scope of my prehearing conference order, but that is -- that is a valid point to consider.

Ms. Suetake, would you like to address anything about the public comment hearing?

MS. SUETAKE: Yes, Your Honor. I agree with -- with counsel for NWEC and Front and Centered that we should have public comment hearings. I guess I'm open to just leaving it TBD for now, to give us more time off the record to determine what date would be best for everybody. And we'd also support having a daytime hearing if the parties think that that would be more helpful to people actually intervening.

Also, with regard to settlement, sharing with the EAG, I was curious if -- if counsel intended it to be part of the negotiation of settlement or once the settlement has been reached because there are settlement confidentiality rules. And so I was kind of hoping for some clarification there.

MS. GOODIN: Yes, thank you. We understand there are confidentiality constraints that we would all have to take into consideration. I guess our -- our main feeling is that, you know, it's the first major document to implement equity mandates that are new under Washington law.

PSE did turn to an advisory committee to help define these, and we don't -- we would like to see them consult with that committee before kind of finalizing any significant change in direction that would implicate work that they did on this document.

So we don't have a fully fleshed out proposal for what that would look like, and we do understand the confidentiality constraints. And I don't think we were envisioning having the entire advisory committee be part of the negotiation process, for example, but we would like to talk with the Company and other parties about how to make that possible.

JUDGE HOWARD: Ms. Barnett, would you like to respond to that?

MS. BARNETT: No, I support having those discussions and -- in line with the confidentiality rules. And PSE has been keeping the EAG up to date so far. So I'm sure we don't have any objection to continuing that within the -- everyone's expectations and understanding.

JUDGE HOWARD: All right. Thank you all. I think that in terms of -- I'm -- I may not include that as any sort of instruction or requirement in the prehearing conference order, but it does sound that that is the Company's practice at the present time, and they do have to -- I imagine that there is some balancing of these concerns with the confidentiality of negotiations.

Is there anything else we should address before we adjourn?

MS. SUETAKE: Your Honor, this is Nina Suetake from Public Counsel Unit. I -- I am concerned about not putting that in an order because it would be new to have settlement -- items that have been discussed in settlement, you know, disclosed to additional parties. I feel like that we should be given guidance in the form of the order there.

I do not object to sharing that sort of information with the Equity Advisory Group. I think that's a good idea. I just want to make sure that the actual content of negotiations or -- because none of those settlements are final until they are filed. They all constitute negotiation positions up until the point they're filed. So I think it would be more helpful to have that in an order.

MS. BARNETT: And, Your Honor, I think this is probably opening it up to I think more than -- than we anticipated to discuss at the prehearing conference. I think, to the extent that the parties have differing understandings of what is going to be confidential for settlement and what isn't, that this -- this probably be not put on the -- in the order.
I think, as far as public information and certainly through a public comment hearing and anything that's in the document is public, I don't see how specific conversations with the EAG is -- is going to go in light of the settlement rules. So I guess, you know, I have no problem with sharing public information, but to the extent there's specific discussions with the EAG, I don't know how that would go. So I'm a little concerned.

JUDGE HOWARD: Yes, I would take -- I would -- I'm understanding Public Counsel's concern about the information PSE is taking and then describing to the EAG members because that implicates the confidentiality of negotiations, if I'm understanding that right. And I think that is -- I mean, it's -- it's the -- the interests of having that participation and that input on those equity issues against the countervailing interests of -- of protecting the negotiation process and allowing that to work. And I am going to take Public Counsel's point here about guidance in the order under consideration, and I'm going to give that some thought. I'm not really sure how I will precisely address it. But it is -- it is an interesting issue to address, and we will possibly comment on that. All right. Anything else before we adjourn? Hearing nothing further, I will issue an order shortly containing the procedural schedule and other guidelines for the disposition of this case. We are adjourned. Thank you.

(Adjourned at 11:05 a.m.)

CERTIFICATE

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

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